

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13/09/2010

CORAM
THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.(MD)NO.4815 of 2008

R.Ramasamy

.. Petitioner

Vs.

1.The Secretary,
Ministry of Higher Education,
Chennai.

2.The Registrar,
T.N.Dr.Ambedkar Law University,
Chennai.

3.The Controller of Examination,
T.N.Dr. Ambedkar Law University,
Chennai.

.. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the third respondent to produce answer manuscripts of M.L. Degree exam Code Nos.PDE, PDF exams held in December, 2007 written by the petitioner in Reg.No.0049 and to direct to revalue the same answer papers in the court supervision and to declare the results before the forthcoming exam on 9th and 11th June 2008.

!For Petitioner ... Mr.R.Ramasamy (Party in person)

^For Respondents ... Mr.S.C.Herold Singh, GA for R-1
Mr.P.Thiagarajan for RR2 and 3

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:ORDER

Heard the petitioner appearing in person, Mr.S.C.Herold Singh, learned Government Advocate for the first respondent and Mr.P.Thiagarajan, learned counsel for respondents 2 and 3 University.

2.The petitioner was a Post Graduate student in Law under the second respondent University. He joined M.L. with Transfer of Properties which is an optional subject. He wrote his final year M.L. Examination and appeared for Public Trust and Charities (PDE) and Land Reform Laws and Leases (PDF) with registration No.0049. But he was unsuccessful. Though he asked for Photostat copies of his answer sheets, the same were not provided. Therefore, he filed the present writ petition, seeking for a direction to produce the answer sheets for the examination wrote by him with code Nos.PDE and PDF for the year December, 2007. Further the court should direct the authorities to revalue the answer sheets under the court supervision and also to declare the results before the ensuing examination in June, 2008.

3.On notice from this court, the respondents have produced the Photostat copies of answer sheets. A counter affidavit, dated 3.7.2008 was also filed by the second respondent. In paragraph 5 of the counter affidavit, it was averred as follows:

"5.I submit, with regard to the averments made in Ground 3 to 6, till now there is no provision for revaluation of M.L.Degree answer scripts in this University.

Since, in normal practice P.G. Degree answer scripts are being valued by different Examiners (Double Valuation), the question of revaluation of answer scripts of the P.G. Programme does not arise. However, the copies of the answer scripts of the Petitioner, viz., (1) Public Trust and Charities (PDE) and (2) Land Reform Laws and Leases (PDF) were forwarded to the petitioner on 07-06-2008 as per his request."

4.This court by an order, dated 15.6.2010 allowed the petitioner to write the examination held in June, 2010 making it clear that in case he succeeds in the writ petition, the results obtained in this writ petition will be binding on parties.

5.After perusing the answer sheets, the petitioner has come up with an additional affidavit, dated 6.11.2009. He had stated that for the U.G.

Course, the University has system of revaluation and there is no reason why they should deny the petitioner's request. It was also stated that the other universities in Tamil Nadu have adopted revaluation procedure even at the P.G. Level. Therefore, there is nothing wrong for this court ordering revaluation. He further submitted that he has done very well in the examination.

6.A perusal of the PDF paper shows that it has been valued by two different examiners and after working out an average of two valuations, he had only secured 37 marks. Likewise, in PDE paper, it has been valued by two examiners and an average worked out to 28 marks. It must be noted that the petitioner had not alleged any malafide.

7.with reference to non furnishing the copies of answer sheets, the conduct of the University cannot be appreciated and without driven the parties to approach this court, the University ought not to have given copies.

8.When a question arose whether such an information is in public domain and the persons are entitled to know the marks obtained in the answer sheets, this court vide its judgment in *The Tamil Nadu Dr. Ambedkar Law University, rep.By its Registrar Vs. The Tamil Nadu State Information Commission and others* reported in 2010 (1) CWC 816 has held that even under the provisions of the Right To Information Act, a third party is entitled to get such an information.

9.With reference to the prayer for revaluation, it must be stated that the petitioner had obtained marks bordering very near to pass mark. Very recently, the Supreme Court dealt with an issue regarding the court's power in ordering revaluation, vide its judgment in *H.P.Public Service Commission Vs. Mukesh Thakur and another* reported in 2010 AIR SCW 3636 = 2010 (6) SCC 759. It is necessary to refer to paragraphs 24 to 26 of the said judgment which is as follows:

"24. The issue of revaluation of answer book is no more *res integra*. This issue was considered at length by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (1984(4) SCC 27), wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for

rechecking/verification/revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp.39-40 & 42, paras 14 & 16)
"14. ? It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ?

* * *

16. ? The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act."

* * *

25. This view has been approved and relied upon and reiterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission(2004 (6) SCC 714) observing as under: (SCC pp. 717-18, para 7)

"7. ? Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks." (emphasis added)

A similar view has been reiterated in Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State (1984(4) SCC 24), Board of Secondary Education v. Pravas Ranjan Panda(2004(13) SCC 383), Board of Secondary Education v. D. Suvankar(2007 (1) SCC 603), W.B. Council of Higher Secondary Education v. Ayan Das(2007 (8) SCC 242) and Sahiti v. Dr. N.T.R. University of Health Sciences(2009(1) SCC 599).

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

10. In the light of the above, there is no case made out to entertain the writ petition. Hence the writ petition will stand dismissed. However there will be no order as to costs.

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To

1. The Secretary,
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